

From: [Barry Appleton](#)
To: [Christel Tham](#); [Tennant Claimant](#); [Ed Mullins](#); [Ben Love](#); sbustillos@reedsmith.com; [Nabeela Latif](#); Heather.Squires@international.gc.ca; Mark.Klaver@international.gc.ca; Annie.Ouellet@international.gc.ca; ["Susanna.Kam@international.gc.ca"](mailto:Susanna.Kam@international.gc.ca); [Cristina Cardenas \(MIA\)](#); MariaCristina.Harris@international.gc.ca; ["Johannie.Dallaire@international.gc.ca"](mailto:Johannie.Dallaire@international.gc.ca); Alexandra.Dosman@international.gc.ca; Darian.Bakelaar@international.gc.ca; ["Benjamin.Tait@international.gc.ca"](mailto:Benjamin.Tait@international.gc.ca)
Cc: Cavinder.Bull@drewnapier.com; dbethlehem@twentyessex.com; DBishop@kslaw.com; [Diana Pyrikova](#)
Subject: RE: PCA Case No. 2018-54: Tennant Energy - Excel Expert Conferral
Date: 21 September 2020 17:01:38

Dear Mr. President and Members of the Tribunal

The Tribunal issued a direction on September 15, 2020 ordering the conferral of valuation experts to find a resolution of a matter related to items supporting the August 7 2020 expert valuation report prepared by Deloitte LLP for the Investor, Tennant Energy (the Deloitte Report).

On August 24, 2020, Canada raised a complaint that its valuation experts could not assess certain matters arising from the Deloitte Report without having Deloitte produce an Excel spreadsheet with formulas. In response, on September 10, 2020, Deloitte provided a letter ("the Deloitte Letter") explaining with specificity where the information supporting the specified concerns could be identified within the existing Deloitte Report. Deloitte concluded that there was no need to produce the excel spreadsheets sought by Canada as the information was already available in the Deloitte Report.

On September 15, 2020, the Tribunal Secretary advised of the Tribunal Direction. The Direction was that the valuation experts meet to see if they could resolve matters.

Tennant Energy wrote to Canada after receipt of the Direction seeking the identity of Canada's experts to facilitate the carrying out of the Tribunal's direction. Tennant Energy also requested that Canada identify the extent of any continuing concerns in light of the review of the Deloitte Letter by Canada's experts by the afternoon of Thursday, September 17.

Canada advised on September 15 that it required instructions from its client concerning the Tribunal's direction. To date, Tennant Energy has not received any further response from Canada.

Tennant Energy wrote to Canada again this morning about Tennant Energy's concern about Canada's inability to identify its experts.

There cannot be a conferral of experts unless experts represent both sides. The arbitration process must be fully effective and not frustrated due to the inaction of a disputing party. Tennant Energy wishes to avoid unnecessary requests made to the Tribunal. However, we find ourselves in a position where there cannot be progress on the September 15 Direction without the assistance of the Tribunal.

Tennant Energy fears that the Tribunal's September 15 direction will be rendered ineffective unless Canada identifies its Canada's experts forthwith.

Accordingly, to make the direction effective, **Tennant Energy requests that the Tribunal order Canada to immediately disclose the identity of its valuation experts along with their contact information.**

We thank the Tribunal for its ongoing efforts in consideration of this matter. On behalf of counsel for the Investor, Tennant Energy

Barry Appleton



Barry Appleton

Managing Partner

Appleton & Associates International Lawyers LP

Tel 416.966.8800 • Fax 416.966.8801

bappleton@appletonlaw.com • www.appletonlaw.com

121 Richmond St. W, Suite 304, Toronto, Ontario • M5R 2K1